

BEFORE THE HEARING PANEL

IN THE MATTER

of the Resource Management Act 1991

AND

of the proposed Te Tai o Poutini Plan

**LEGAL SUBMISSIONS
FOR THE DIRECTOR-GENERAL OF CONSERVATION**

26 February 2024

Natural Features and Landscapes

Department of Conservation / Te Papa Atawhai

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Legal submissions before the Commissioners

1. The Director-General of Conservation (Director-General) lodged a submission and further submission on the proposed Te Tai o Poutini Plan (pTTPP).
2. These legal submissions focus on:
 - a) Statutory Framework;
 - b) National Direction;
 - c) West Coast RPS; and
 - d) The Director-General's submission points relating to Natural Features and Landscapes.

Evidence to be called by the Director-General

3. The Director-General calls one witness to provide expert evidence, Ms Amy Young, an RMA planner, who has prepared evidence on planning matters relating to the Director-General's submission on the pTTPP.

Statutory Framework

4. Section 6(b) of the RMA provides that district councils are required to recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.
5. Under section 31 of the RMA district councils are responsible for the management of activities on land, including the control of any potential effects of the use, development, or protection of land.
6. The "Overview" section of this chapter states that *"The rules in this chapter relate to earthworks, buildings, structures, plantation forestry and Māori Purpose Activities in Outstanding Natural Landscapes and Outstanding Natural Features. Where Outstanding Natural Landscapes and Outstanding Natural Features are located in the Coastal*

Environment, the Objectives, Policies and Rules of the Coastal Environment Chapter apply.”¹

7. The pTTPP may benefit from further clarity as to whether the objectives, policies and rules in the coastal environment are instead of (as opposed to in addition to) those in this chapter (see for example the “Advice Note” in NFL-R5 and NFL-R6 as recommended by the s42A Officer which do not appear consistent in this regard).

West Coast RPS

8. DOC has reviewed the Natural Features and Landscapes Chapter of the RPS. To assist the Panel, I provide the following comments in relation to the Natural Features and Landscapes chapter:
 - a) The chapter is brief (only two pages) but appears to align with section 6(b) of the RMA in relation to the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development; and
 - b) Policy 4 allows activities which have no more than minor adverse effects in outstanding natural features and outstanding natural landscapes. In my view this is consistent with case law.²
9. DOC has reviewed the Natural Features and Landscapes provisions of the pTTPP³ to see if they are consistent with the RPS provisions (and in particular the policy to allow activities which have no more than minor adverse effects in outstanding natural features and outstanding natural landscapes).
10. In policies such as NFL-P3 and NFL-P4 it appears that the threshold of no more than minor effects in ONL/ONF is appropriately reflected in the pTTPP.
11. However, in my view, NFP-2 is inconsistent with the no more than minor threshold of Policy 4 RPS as per the below:

¹ Page 179 of the pTTPP

² See *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] SC 38, para 145

³ Note I have only focussed on policies and rules that are within the scope of the Director-General's submission

Policy/rule reference as provided in Appendix one of Ms Young's evidence	Reason inconsistent with RPS threshold
<p>NFP-2</p> <p><i>Where possible practicable, avoid significant adverse effects on the values that contribute to outstanding natural landscapes described in Schedule Five and outstanding natural features described in Schedule Six. Where significant adverse effects cannot be avoided, ensure that the adverse effects are <u>otherwise minimised, remedied, mitigated or offset or compensated in accordance with the effects management hierarchy.</u></i></p>	<p>The effects threshold in this policy (where practicable avoid significant adverse effects on ONF/ONL) is inconsistent with the no more than minor threshold in policy 4 of the RPS.</p>

Submission points relating to the Natural Features and Landscapes chapter

12. In relation to these topics the Director-General is seeking the amendments to the pTTPP as set out in her submission and the evidence of Amy Young dated 12 February 2024.
13. Having reviewed Ms Young's evidence I note that most of the Director-General's submission points in relation to these topics have been accepted in the recommendations contained in the Officer's report.

26 February 2024



Matt Pemberton
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